

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEREMIAH LEE MAY, an
individual; SCOTT LAWRENCE MAY,
an individual; GAVIN ROYD MAY,
an individual; and RUSSELL LANE,
an individual,

No. 2:12-cv-01791-MCE-DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

RONALD LEE HAAS, an
individual; SCHNEIDER NATIONAL
CARRIERS, INC., an unknown
corporation; and DOES 1
through 40, inclusive,

Defendants.

-----oo0oo-----

Plaintiffs, Jeremiah Lee May, Scott Lawrence May, Gavin Royd
May and Russell Lane (collectively, "Plaintiffs"), originally
brought this action in the Superior Court of the State of
California, County of Sacramento, against Defendants Ronald Lee
Haas ("Haas"), an individual, and Schneider National Carriers,
Inc. ("Schneider National"), a Nevada corporation with its
principal place of business in Wisconsin.

///

1 Defendant Schneider National timely removed the action to this
2 Court pursuant to the Court's diversity jurisdiction, and
3 Plaintiffs subsequently filed a Motion to Remand, which is
4 presently before the Court. For the following reasons,
5 Plaintiffs' Motion to Remand is DENIED.¹

6
7 **BACKGROUND**²
8

9 On May 29, 2012, Plaintiffs filed this action against
10 Defendants Haas and Schneider National in state court alleging
11 causes of action for wrongful death and negligence. Plaintiffs
12 allege that, on July 30, 2011, a truck owned by Defendant
13 Schneider National and operated by Defendant Haas collided with a
14 car driven by decedent George May ("Decedent"). According to
15 Plaintiffs, Defendant Haas's negligence was the cause of the
16 accident which led to Decedent's death.

17 As alleged, Plaintiffs are citizens of Colorado and Kansas;
18 Defendant Haas is a citizen of California; and Defendant
19 Schneider National is a Nevada Corporation with its principal
20 place of business in Wisconsin. Schneider National was served
21 with the summons and Complaint on June 18, 2012. On July 6,
22 2012, Schneider National removed the action to this Court,
23 asserting diversity jurisdiction pursuant to 28 U.S.C. § 1332.

24
25 ¹ Because oral argument will not be of material assistance,
26 the Court ordered this matter submitted on the briefing. E.D.
Cal. Local Rule 230(g).

27 ² Unless otherwise noted, the following facts are taken from
28 the Notice of Removal, filed by Defendant Schneider National on
July 6, 2012 [ECF No. 1], and Plaintiff's Complaint, attached to
the Notice of Removal as Exhibit A.

1 It is undisputed that, at the time of the removal, Defendant Haas
2 had not been served.³

3
4 **STANDARD**

5
6 A defendant may remove any civil action from state court to
7 federal district court if the district court has "original
8 jurisdiction" over the matter. 28 U.S.C. § 1441(a). Generally,
9 district courts have original jurisdiction over civil actions in
10 two instances: (1) where there is complete diversity between the
11 parties and the amount in controversy exceeds \$75,000; or
12 (2) where a federal question is presented in an action arising
13 under the Constitution, federal law, or treaty. 28 U.S.C.
14 §§ 1331 and 1332. However, under the "forum defendant rule," a
15 diversity action "may not be removed if any of the parties in
16 interest properly joined and served as defendants is a citizen of
17 the State in which such action is brought." 28 U.S.C.
18 § 1441(b)(2) (emphasis added).

19
20 **ANALYSIS**

21
22 In seeking remand, Plaintiffs argue that the removal was
23 improper under the forum defendant rule because Defendant Haas is
24 a California citizen. (Pl.'s Mot. at 5.)

25
26

³ Defendant Haas was served with the summons and Complaint
27 on July 12, 2012, six days after Schneider National filed its
28 Notice of Removal. (Pls.' Mot. to Remand ("Pl's Mot.") [ECF
No. 9], filed July 17, 2012, at 4.)

1 In response, Schneider National contends that the removal is
2 proper because no California citizen had been "properly joined
3 and served" at the time of removal. (Def.'s Opp. [ECF No. 12],
4 filed Aug. 9, 2012, at 3.) Schneider National argues that
5 § 1441(b) should be read in accordance with the plain language of
6 the statute such that remand is only appropriate by the presence
7 of an in-state defendant who had already been served at the time
8 of removal. (Id.) Plaintiffs counter that a plain language
9 reading of § 1441(b) would result in forum shopping and
10 gamesmanship based on the speed of service, and thus would be
11 contrary to the purpose underlying the statute which was to
12 discourage such behavior and to protect out-of-state defendants
13 from possible prejudices in state court.⁴ (Pls' Reply [ECF
14 No. 14], filed Aug. 16, 2012, at 2.)

15 A plain meaning interpretation is consistent with one of the
16 fundamental principles of statutory interpretation "that the
17 meaning of a statute must, in the first instance, be sought in
18 the language in which the act is framed." Caminetti v. United
19 States, 242 U.S. 470, 485 (1917). If the statutory language "is
20 plain, and if the law is within the constitutional authority of
21 the lawmaking body which passed it, the sole function fo the
22 courts is to enforce it according to its terms."

24 ⁴ The Ninth Circuit explained in Lively v. Wild Oats Mkts.,
25 Inc., 456 F.3d 933, 940 (9th Cir. 2006) that the purpose of
26 section 1441(b) is "to protect out-of-state defendants from
27 possible prejudices in state court. The need for such protection
28 is absent, however, in cases where the defendant is a citizen of
the state in which the case is brought. Within this contextual
framework, the forum defendant rule allows the plaintiff to
regain some control over forum selection by requesting that the
case be remanded to state court."

1 Id.; see also Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438,
2 461-62 (2002) ("We have stated time and again that courts must
3 presume that a legislature says in a statute what it means and
4 means in a statute what it says there.") (citations omitted).
5 This Court must enforce the existing statutory text according to
6 its plain terms unless doing so "would lead to absurd results" or
7 "would thwart the obvious purpose of the statute." Commissioner
8 of Internal Revenue v. Brown, 380 U.S. 563, 571 (1965) (citations
9 omitted).

10 In Spencer v. U.S. Dist. Ct. for N. Dist. of Cal., the
11 Ninth Circuit applied the plain meaning interpretation of
12 § 1441(b) when it considered "whether the joinder of a local, but
13 completely diverse defendant, after an action has been removed to
14 federal court, requires remand." 393 F.3d 867, 870-71 (9th Cir.
15 2004). The court held that the post-removal joinder of a forum
16 defendant does not require remand so long as removal was proper
17 at the time of removal. Id. at 871. The court explained that
18 "[c]hallenges to removal jurisdiction require an inquiry into the
19 circumstances at the time the notice of removal is filed." Id.
20 "Subsequent events, at least those that do not destroy original
21 subject-matter jurisdiction, do not require remand." Id. Thus,
22 Ninth Circuit precedent, although not directly on point, appears
23 to support the plain meaning interpretation of section 1441(b).⁵

25 ⁵ The Ninth Circuit has yet to provide guidance as to the
26 proper interpretation of section 1441(b) when a defendant removes
27 an action before a forum defendant has been served. See
28 Khashan v. Ghasemi, 2010 WL 1444884, at *3 (C.D. Cal. Apr. 5,
2010) ("Because district court orders under § 1441 are generally
not reviewable, the Ninth Circuit and other circuit courts have
not had the opportunity to provide guidance on this point.")

1 Plaintiffs rely on a line of unpublished district courts'
 2 decisions rejecting the plain meaning interpretation of § 1441(b)
 3 in favor of the interpretation based on the statute's underlying
 4 policy and purpose.⁶ (Pls' Mot. at 8 n.4.) However, in all of the
 5 cases cited by Plaintiffs, courts found it dispositive that none
 6 of the defendants had been served prior to removal or that
 7 plaintiffs had been deprived of a meaningful opportunity to
 8 provide service before defendants filed for removal. See, e.g.,
 9 Khashan, 2010 WL 1444884, at *3 (finding that none of the
 10 defendants had been served at time of removal); Mohammed, 2009 WL
 11 857517, at *3-4 (same); Hoskinson, 2010 WL 2652467, at *2
 12 (finding that Plaintiffs were deprived of "a sufficient
 13 opportunity to serve the forum defendant" because the case was
 14 removed two days after the suit was filed); Morris, 2010 WL
 15 2652473, at *2 (same).

16 Here, Schneider National filed its Notice of Removal on
 17 July 6, 2012, twenty-eight days after the Complaint was initially
 18 filed and eighteen days after Schneider National was served.
 19 Thus, Plaintiffs had sufficient time to effectuate service on
 20 Defendant Haas before Schneider National filed its Notice of
 21 Removal.

22 ///

24 ⁶ Plaintiffs cite to Traslavina v. MDS Pharma Servs. Inc.,
 25 2011 WL 2132880 (D. Ariz. May 27, 2011); Morris v. Alza Corp.,
 26 2010 WL 2652473 (E.D. Cal. July 1, 2010); Hoskinson v. Alza
Corp., 2010 WL 2652467 (E.D. Cal. July 1, 2010); Khashan v.
Ghasemi, 2010 WL 1444884 (C.D. Cal. Apr. 5, 2010); Ibarra v.
 27 Protective Life Ins. Co., 2009 WL 1651292 (D. Ariz. June 12,
 28 2009); Mohammed v. Watson Pharm. Inc., 2009 WL 857517 (C.D. Cal.
 Mar. 26, 2009); Standing v. Watson Pharm. Inc., 2009 WL 842211
 (C.D. Cal. Mar. 26, 2009).

1 Contrary to Plaintiffs' assertion, Schneider National did not
2 "race" to the courthouse to remove this case to federal court.
3 (See Pl's Mot. at 4.) Therefore, the concern of procedural
4 gamesmanship by defendants is not present here. Accordingly,
5 the Court finds no reasons to depart from the plain language of
6 § 1441(b). Under the circumstances at issue, adopting an
7 interpretation of § 1441(b) based on its underlying purpose and
8 policy would undermine a fundamental principle of statutory
9 interpretation that gives deference to the plain meaning of the
10 statute. See Caminetti, 242 U.S. at 485.

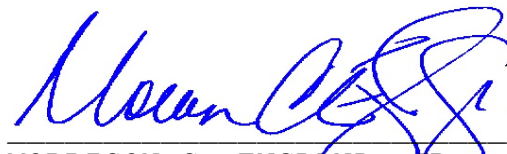
11 It is undisputed that Defendant Haas had not been served at
12 the time Schneider National removed the case to this Court. It
13 is also undisputed that complete diversity continues to exist
14 between the parties after Haas has been served. Because no local
15 defendant was served at the time of removal, removal of this
16 action was proper. Therefore, Plaintiffs' Motion to Remand is
17 denied.

18 CONCLUSION

19
20 Based on the foregoing, the Court DENIES Plaintiff's Motion
21 to Remand.

22 IT IS SO ORDERED.

23 Dated: October 15, 2012

24
25 

26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
28